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WILLIAM P. BADUA,
JEFFREY OMAI and
SPENCER ANDERSON

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAR 03 2006
at 4 o'clock and 00 min. M
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

OFELIA COLOYAN,

) CIVIL NO. CV03-476 KSC

Plaintiff,

) DEFENDANTS WILLIAM P.

vs.

) BADUA, JEFFREY OMAI AND

WILLIAM P. BADUA;
JEFFREY OMAI;
SPENCER ANDERSON;
NEIL PANG;
and DOES 5-10,

) SPENCER ANDERSON'S

) PROPOSED JURY INSTRUCTIONS;

) CERTIFICATE OF SERVICE

)

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)

)

Defendants.

) TRIAL DATE: WEEK OF

) MARCH 14, 2006

)

**DEFENDANTS WILLIAM P. BADUA, JEFFREY OMAI AND
SPENCER ANDERSON'S PROPOSED JURY INSTRUCTIONS**

Defendants WILLIAM P. BADUA, JEFFREY OMAI and SPENCER ANDERSON (collectively hereinafter "Defendants"), by and through their attorneys, Carrie K. S. Okinaga, Corporation Counsel, and Kendra K. Kawai and Marie Manuele Gavigan, Deputies Corporation Counsel, herein submit the following Proposed Jury Instructions, pursuant to Rule 51-1 of the Rules of the United States District Court for the District of Hawaii.

In addition to the attached jury instructions, Defendants request that the following general federal jury instructions approved from this Honorable Court be submitted to the jury: Jury Instructions No. 1.1, 1.4 (modified)*, 1.5, 2.1, 2.2, 2.3, 3.2, 3.3, 4.1 (if necessary), 4.2 (modified)*, 4.3 (if necessary), 4.4, 4.5, 4.6, 5.1, 5.2, 5.3, 5.4, 8.1, 8.2, 8.3, 8.5, 8.9 (modified)*, 8.10 (modified)*, 8.11 (modified)*, 8.12 (modified)*, 8.13, 8.14, 8.15, 8.16, 9.1, 9.2 and 9.3.

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* Please see attached jury instruction.

Defendants reserve the right to withdraw any proposed instruction, to add new instructions and/or to amend any proposed instruction.

DATED: Honolulu, Hawai'i, March 3, 2006.

CARRIE K.S. OKINAGA
Corporation Counsel

By:

Kendra K. Kawai
KENDRA K. KAWAI
MARIE MANUELE GAVIGAN
Deputies Corporation Counsel

Attorney for Defendants
WILLIAM P. BADUA,
JEFFREY OMAI and
SPENCER ANDERSON

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 1

The testimony of a witness has been presented into evidence by a videotape deposition. A deposition is the testimony of a witness given under oath before the trial and preserved in written form, and in this case, by videotape.

You must consider and judge the deposition testimony of a witness in the same manner as if the witness actually appeared and testified in court in this trial.

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 2

If you find for plaintiff on the issue of liability, plaintiff is entitled to damages in such amount as in your judgment will fairly and adequately compensate her for the injuries which she suffered. In deciding the amount of such damages, you should consider:

1. The extent and nature of the injuries she received;
2. The emotional distress which she has suffered, if any.

General Federal Jury Instructions in Civil Cases of the United States Magistrate Judges, District of Hawaii, Jury Instruction No. 8.9 (modified).

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 3

On the Plaintiff's Fourth Amendment claim, the Plaintiff has the burden of proving each of the following elements by a preponderance of the evidence:

1. The acts or omissions of the Defendants were intentional;
2. The Defendants acted under the color of state law; and
3. The acts or omissions of the Defendants were the cause of the deprivation of the Plaintiff's rights protected by the Constitution or laws of the United States.

If you find that each of the elements on which the Plaintiff has the burden of proof has been proved, your verdict should be for the Plaintiff. If, on the other hand, the Plaintiff has failed to prove any of these elements, your verdict should be for the Defendants.

Ninth Circuit Model Civil Jury Instruction 11.1 (modified).

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 4

The plaintiff claims that the defendants intentionally deprived the plaintiff of the Fourth Amendment constitutional right to be free from an unreasonable search.

The plaintiff has the burden of proving by a preponderance of the evidence that the search was unreasonable.

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 5

In analyzing the reasonableness of a particular search, it is imperative that the facts be judged against an objective standard.

Terry v. Ohio, 392 U.S. 1, 21, 88 S.Ct. 1868, 1879 (1968).

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 6

A search is reasonable, and a search warrant is not required, if a person in lawful possession of the area knowingly and voluntarily consents to the search.

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 7

If you award plaintiff any damages, then you may consider whether you should also award punitive damages. The purpose of punitive damages are to punish the wrongdoer and to serve as an example or warning to the wrongdoer and others not to engage in such conduct.

You may award punitive damages against a particular defendant only if plaintiff has proved by clear and convincing evidence that the particular defendant acted intentionally, willfully, wantonly, or oppressively. Punitive damages may not be awarded for mere inadvertence, mistake or errors of judgment.

The proper measure of punitive damages is (1) the degree of intentional, willful, wonton, oppressive, or malicious conduct that formed the basis for your prior award or damages against that defendant and (2) the amount of money required to punish that defendant considering his financial condition. In determining the degree of a particular defendant's conduct, you must analyze that defendant's state of mind at the time he committed the conduct which formed the basis for your prior award of damages against the defendant. Any punitive damages you award must be reasonable.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

OFELIA COLOYAN,) CIVIL NO. 03-476 KSC
)
Plaintiff,) CERTIFICATE OF SERVICE
)
vs.)
)
WILLIAM P. BADUA;)
JEFFREY OMAI;)
SPENCER ANDERSON;)
NEIL PANG;)
and DOES 5-10,)
)
Defendants.)
)
)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the within was duly served by U.S. Mail to the following individuals at their addresses shown below on March 3, 2006:

JACK SCHWEIGERT, ESQ.
550 Halekauwila Street, Room 309
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and

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and

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Attorneys for Plaintiff
OFELIA COLOYAN

DATED: Honolulu, Hawai'i, March 3, 2006.

CARRIE K.S. OKINAGA
Corporation Counsel

By: 
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MARIE MANUELE GAVIGAN
Deputies Corporation Counsel

Attorney for Defendants
WILLIAM P. BADUA, JEFFREY OMAI
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